SAINAL ABIDIN MADING

v.

PP

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
AHMAD FAIRUZ JCA
HAIDAR MOHD NOOR JCA
[CRIMINAL APPEAL NO: S-05-85-97]
13 SEPTEMBER 1999

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Ingredients - Whether there was intention to kill - Right of private defence - Grave and sudden provocation - Exceptions 2 and 4 to s. 300 Penal Code - Applicability - Penal Code, ss. 299, 300, 302*

On 5 July 1997, at his place of work in Sandakan, the appellant stabbed his co-worker Isnidil bin Radin ('the deceased') by using a sharp-edged iron rod. The deceased suffered serious wounds in his heart and lung and subsequently succumbed to the injuries. The facts showed that the appellant had stabbed the deceased several times, and continued to do so even after the deceased had collapsed. It was also evident that the appellant and the deceased were not engaged in a fight at the material time, and that the deceased was unarmed when he was attacked. On the facts, the High Court convicted the appellant for murder and sentenced him to death. The appellant appealed and argued that he was wrongly convicted as: (i) he had no intention to kill the deceased within the meaning of s. 300 Penal Code; (ii) he had stabbed the deceased in the exercise of right to private defence; and (iii) the stabbings occurred during a sudden fight between him and the deceased.

Held:
Per Haidar Mohd Noor JCA

[1] There was ample evidence to show that the dead person as in the charge is the deceased. The deceased was identified by his father PW8 and also by PW7 and the identification was not disputed by the defence. The first ingredient of the offence was thus satisfied.

[2] As for the ingredient that the deceased had died as a result of injuries sustained by him, there was sufficient evidence by PW3, the doctor who conducted the post mortem, to that effect. PW3 confirmed that the deceased died due to the injuries sustained by him and hence, the second ingredient was also satisfied.

[3] The evidence of the chemist, together with the evidence of the eye witnesses ('PW4 and PW5'), whom the learned judge accepted as witnesses of truth, showed that the injuries of the deceased were caused by the appellant. PW4 saw the appellant stabbing the deceased and testified that the stabbing was not preceded by any fight. PW4's evidence was supported by PW5 on the material particulars, and the prosecution thus had satisfied ingredient 3.

[4] The appellant's intention was reflected in the nature and number of injuries caused to the deceased. The fact that PW4 and PW5 did not see the weapon used when the appellant approached the deceased showed that the appellant was deliberate in his action, and had concealed the weapon before stabbing the deceased. The fourth and final ingredient of the offence had been proved against the appellant, and the learned judge was right in ruling that a *prima facie* case had been made out by the prosecution.

[5] Bearing in mind the nature of the injuries sustained by the deceased, the number of wounds and the weapon used, the learned judge correctly concluded that the appellant had intended to kill the deceased, *ie*. that the appellant had the intention of causing such bodily injuries and such bodily injuries intended were sufficient in the course of nature to cause death. The first line of the defence must therefore fail.

[6] The learned judge correctly evaluated the evidence from both sides, and correctly came to the conclusion that the issue of self defence did not at all arise.

[7] The learned judge was also right in concluding that there was no basis for him to infer that prior to the stabbings there existed a sudden fight between the appellant and the deceased. By using P16 to stab the deceased not once but four times, including one when the deceased had collapsed, the appellant had acted in a cruel or unusual manner, thereby failing to pass the second test required under Exception 4 of s. 300 Penal Code. Consequently, the learned judge had committed no errors on the conclusions he made and had properly convicted the appellant.

[Appeal dismissed; conviction and sentence affirmed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Pada 5 Julai 1997, di tempat kerjanya di Sandakan, perayu telah menikam rakan sekerja beliau yang bernama Isnidil bin Radin ('si mati') dengan menggunakan sebatang besi paip yang tajam bahagian tepinya. Si mati mengalami kecederaan serius di bahagian limpa dan jantung dan telah meninggal dunia kemudiannya. Fakta menunjukkan bahawa perayu telah menikam si mati beberapa kali, dan terus berbuat demikian sekalipun si mati telah rebah ke tanah. Keterangan juga menunjukkan bahawa perayu dan si mati bukanlah terlibat dalam suatu pergaduhan pada waktu material, dan si mati juga tidak bersenjata semasa diserang perayu. Berdasarkan fakta, Mahkamah Tinggi mensabit perayu atas kesalahan bunuh dan menjatuhkan hukuman mati ke atasnya. Perayu merayu dan berhujah bahawa pensabitannya adalah silap kerana: (i) beliau tiada niat untuk membunuh si mati seperti maksud s. 300 Kanun Keseksaan; (ii) beliau menikam si mati sewaktu mempertahankan dirinya; dan (iii) tikaman dibuat semasa pergaduhan secara tiba-tiba di antara beliau dan si mati.

Diputuskan:
Oleh Haidar Mohd Noor HMR

[1] Terdapat keterangan kuat yang menunjukkan bahawa orang yang mati seperti di dalam pertuduhan adalah si mati. Si mati dikenalpasti oleh bapanya PW8 dan juga oleh PW7 dan pengenalan tersebut tidak dipertikai oleh pembelaan. Ingredien pertama kesalahan dengan itu telah dipenuhi.

[2] Berhubung ingredien bahawa si mati mati kerana kecederaan yang dialaminya, terdapat keterangan yang mencukupi tentang itu oleh PW3, doktor yang melakukan bedah siasat. PW3 mengesahkan bahawa si mati mati kerana kecederaannya, yang bererti ingredien kedua telah dipenuhi.

[3] Keterangan ahli kimia, beserta keterangan saksi-saksi pandang ('PW4 dan PW5'), saksi mana telah diterima sebagai saksi benar oleh hakim bijaksana, menunjukkan bahawa kecederaan si mati diakibatkan oleh perayu. PW4 melihat perayu menikam si mati dan menjelaskan bahawa tikaman tidak didahului oleh apa-apa pergaduhan. Keterangan PW4 disokong secara material oleh PW5. Pendakwaan dengan itu telah membuktikan ingredien 3.

[4] Niat perayu terserlah dari sifat and jumlah kecederaan yang dikenakan terhadap si mati. Fakta bahawa PW4 and PW5 tidak nampak senjata yang digunakan sewaktu perayu mendekati si mati menunjukkan bahawa perayu bertindak secara terancang, dan telah menyorok senjatanya sebelum menikam si mati. Ingredien ke empat dan terakhir kesalahan telah dibuktikan terhadap perayu, dan hakim bijaksana adalah betul bila memutuskan bahawa satu kes *prima facie* telah dibuktikan oleh pendakwaan.

[5] Mengambilkira sifat kecederaan yang dialami si mati, serta jumlah luka dan senjata yang digunakan, hakim bijaksana membuat konklusi yang betul bahawa perayu berniat untuk membunuh si mati, *ie*, bahawa perayu mempunyai niat untuk menyebabkan kecederaan badan dan kecederaan yang diniat itu mencukupi pada kebiasaannya untuk menyebabkan kematian. Garis pertama pembelaan dengan itu gagal.

[6] Hakim bijaksana telah menilai dengan sempurna keterangan di kedua pihak dan telah memutuskan dengan betul bahawa isu pertahanan diri langsung tidak berbangkit.

[7] Hakim bijaksana juga betul dalam keputusannya bahawa tiada asas untuknya membuat anggapan bahawa terdapat pergaduhan mengejut di antara perayu dan si mati sebelum si mati ditikam. Dengan menggunakan P16 untuk menikam si mati bukan sekali tetapi empat kali, termasuk tikaman ketika si mati sudah rebah, perayu jelas telah mengambil kesempatan atau bertindak secara kejam atau luar biasa, dan dengan itu beliau gagal melepasi ujian kedua yang diperlukan di bawah Kecualian 4 s. 300 Kanun Keseksaan. Akibatnya, hakim bijaksana tidak melakukan apa-apa kesilapan dalam konklusi-konklusi beliau dan telah mensabit perayu dengan teraturnya.

[Rayuan ditolak; sabitan dan hukuman disahkan]

Case(s) referred to:
Dato' Mokhtar Hashim v. PP [1983] 2 MLJ 232 ***(refd)***
Lim Yow Choon v. PP [1972] 1 MLJ 205 ***(refd)***
PP v. Mohamed Nor Jantan [1979] 2 MLJ 290 ***(foll)***
Tan Buck Tee v. PP [1961] 27 MLJ 176 ***(refd)***
Teoh Seng Lian v. PP [1986] 1 MLJ 474 ***(dist)***
Tham Kai Yan & Ors v. PP [1977] 1 MLJ 174 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 66
Penal Code, ss. 299, 300, 302

For the appellant - Francis Wong; M/s Peter Lo
For the PP - Tun Majid Tun Hamzah DPP

[Appeal from High Court Sandakan, Criminal Trial No: S 47-03 of 1997]

Reported by WA Sharif

JUDGMENT

Haidar Mohd Noor JCA:

The appellant was charged at the High Court, Sandakan for the offence of murder under s. 302 of the Penal Code.

The charge reads:

> That you, on the 5th day of July, 1997 at about 4.00 p.m. at Capital Veneers & Plywood Sdn. Bhd., a factory located at Mile 9, Jalan Labuk, in the District of Sandakan, in the State of Sabah, did commit murder by causing the death of one ISNIDIL B. RASIN, 25 years old male, and you have thereby committed an offence punishable under Section 302 of the Penal Code (FMS Cap 45).

He was found guilty as charged and convicted accordingly by the learned judge. He was sentenced to death.

We heard his appeal against the conviction. We dismissed the appeal and affirmed the conviction and the sentence. We now proceed to give our reasons for upholding the conviction and the sentence.

The learned judge in his judgment set out the necessary ingredients that the prosecution has to prove against the appellant in order to sustain a conviction under s. 302 of the Penal Code.

The ingredients are:

(1) That Isnidil bin Rasin is dead;

(2) That Isnidil bin Rasin died as a result of injuries sustained by him;

(3) That the injuries of Isnidil bin Rasin were caused or the result of the act of the appellant;

(4) That in inflicting the injuries upon Isnidil bin Rasin, the appellant either:

   (a) caused them with the intention of causing death; or

   (b) caused them with the intention of causing such bodily injuries as the appellant knew to be likely to cause the death; or

   (c) caused them with the intention of causing bodily injuries and such bodily injuries were sufficient in the ordinary course of nature to cause death.

There is ample evidence to show that the dead person as in the charge is Isnidil bin Rasin (deceased). The deceased was identified by his father (PW8) and Asiah bte Dollah (PW7). The defence on the evidence in the record, did not dispute as to this fact either. The first ingredient was therefore satisfied.

As regards to the second ingredient, there is sufficient evidence from Dr. Mohammad Khalid Yusuf (PW3) who conduced the post-mortem on the deceased. He recorded his findings and prepared a post-mortem report which was produced as exh. P27 by the prosecution. According to the post-mortem report, the cause of death was:

1a. Stab wound in the ventricle of heart causing haemothorax.

1b. Two stab wounds on right lung.

Further, PW3 stated that he found the following injuries on the deceased, namely:

(i) one stab wound at the left side of the chest. It was about 3cm. in width on entry and about 7cm. in depth. It penetrated into the left ventricle of the heart;

(ii) two wounds at the right side of the chest. They were also about 3cm. in width and 7cm. in depth. Both penetrated into the right lung; and

(iii) one wound on the left upper arm. It was a slashed wound of about 3cm. in width and 1cm. in depth.

PW3 confirmed that the deceased died due to the injuries sustained by him. Hence the second ingredient was also satisfied.

The important ingredient for consideration would be ingredient (3).

To establish this ingredient, the prosecution called several witnesses including a chemist (PW2) and two eve-witnesses namely, Samiah bte Tukiman (PW4) and Maimunah bte Butunga (PW5).

The prosecution case in respect of this ingredient can be briefly stated as follows.

The deceased, the appellant, PW4 and PW5 worked in the factory of Capital Veneer and Plywood Sdn. Bhd. Besides them, there were also other workers namely, Seharan, Abdal and two others whom PW4 could not remember who they were.

PW4 went on to outline the duties of each of the workers she mentioned on that fateful day, that is, 5 July 1997. PW4 worked in the "Roteri" section of the factory together with the other workers. The appellant was the operator and she identified him in court. The other operator was Abdal. PW4, PW5, Seharan and the deceased were responsible for affixing tapes on the veneers in order to prevent them from breaking when rolled. According to PW4, the deceased and Seharan had the additional duty of receiving the excess cuttings of the veneers when they rolled on the machine.

According to PW4, the appellant and Abdal were working on a higher level but she could see them and *vice versa*. The machines in the factory were noisy and hence if they talked loudly PW4 could hear them and similarly they could hear her also if she talked loudly.

On 5 July 1997 at about 4pm after she had finished her prayer and returned to her place of work, she heard the appellant shouting "koyak, koyak" an instruction to tear the spoilt veneer but PW5 replied "nanti dulu". That prompted the appellant to go down and tore the piece himself. At that time the deceased was beside Maimunah (PW5)

When the appellant tore the spoilt piece. PW4 saw that part of it hit the deceased and that made the deceased angry. According to PW4 the deceased then asked the appellant "kau marah kah". However, it seemed that the appellant kept quiet and went back to his place of work. The deceased meanwhile kept on talking.

When the appellant heard the deceased continuing talking, PW4 said that the appellant came down quickly from his place of work and approached the deceased. Thereafter the appellant stabbed the deceased at the front part of his body. PW4 could not say how many times. As she was scared, PW4 ran away from the area shouting. She went to the clipper section from where she saw the appellant holding what she described as a knife and saw the appellant going back to his place of work before going down towards the back of the factory. She described the object used looked like exh. P16 (an iron rod of size 22.0 cm. long and 2.5 cm. wide and 0.7 cm. thick with a sharp-edge). PW4 said that when she saw the appellant came down and approached the deceased she did not see him holding anything. When the deceased was stabbed he (the deceased) was not holding anything either.

Under cross-examination PW4 said that she did not hear the deceased uttering any foul language to the appellant and neither did she see the appellant being hit on the back by the deceased. PW4 also denied the suggestion of the defence that the deceased went to the place of work of the appellant but the deceased remained standing beside PW5. Though the deceased said something

but according to PW4, the deceased was not in a shouting mood. When it was suggested that there was a fight, PW4 according to the learned judge, without hesitation, said that there was none. According to PW4, she never saw the deceased and the appellant quarrelled before the incident.

The other witness, PW5 supported the evidence of PW4 on the material particulars, that is, the appellant shouted "koyak" when the good veneers were mixing with the spoilt ones and PW5 replied "nanti dulu" and that the appellant came down to tear the spoilt veneers and in the course of doing so, the torn veneer hit the face of the deceased and the deceased asked the appellant "kau marah kah". The appellant did not respond. PW5 saw the appellant thereafter went back to his place of work and then he came down and approached the deceased who was beside her. PW5 did not see the appellant holding anything at that time and neither was the deceased holding anything. PW5 then saw the appellant stabbed the deceased several times at the front part of the body and the deceased did not fight back but collapsed instead. Even after he collapsed, the appellant further stabbed him on the side. PW5 then ran away. PW5 identified P16 as the object used by the appellant.

Similarly, as in the case of PW4, PW5 under cross-examination, denied that the deceased used foul language and went to the appellant's place of work. PW5 also denied that the deceased hit the appellant on the head and PW5 further said that she never saw the two quarrelling before. In fact after the deceased was hit by the spoilt veneer torn by the appellant, PW5 maintained that the deceased only talked and shouted "kau marah kah". PW5 identified the appellant as the one who stabbed the deceased. According to PW5 under re-examination they did not run away when the appellant returned to his place of work after tearing the spoilt veneer as nothing was suspect.

So much for the evidence of the two eye-witnesses in which the learned judge accepted as being truthful witnesses.

Nothing much turned on the evidence of the Chemist, Shaari Hj. Desa (PW2). He gave evidence of the examination of the various exhibits submitted to him by the police and the grouping of the blood found on some of the exhibits. The blood group all refers to group 'D'.

The prosecution led evidence of the arrest of the appellant through PW11. The investigation officer, Insp. Nor Azlan (PW14) gave evidence to the discovery of exh. P16 through the appellant after he had read the statutory caution to the appellant at the direction of ASP Said Noor (PW15), the Sandakan District Crime Officer. At the request of the defence, the cautioned statement of the appellant was put through PW14 and marked as defence exh. (D1).

The learned judge was satisfied that the prosecution had satisfied ingredient 3.

In regard to ingredient 4, as stated earlier, the nature and number of the injuries caused to the deceased by the appellant will show the intention. Quite apart from the injuries, the evidence of PW4 and PW5 that neither of them saw the weapon used by the appellant when he approached the deceased would tend to show that the appellant was deliberate in his action of stabbing the deceased. Further, he must have concealed the weapon before stabbing the deceased with it as otherwise PW4, PW5 and the deceased would have fled on seeing the appellant coming openly with the weapon.

The learned judge was satisfied that this ingredient had been proved by the prosecution.

After considering the totality of the prosecution case, the learned judge ruled that a *prima facie* case had been made out and accordingly called the appellant to enter on his defence.

Defence Case

The appellant elected to give evidence on oath.

His defence can be broadly stated:

(a) no intention to kill the deceased within s. 300 of the Penal Code;

(b) right of private defence within exception 2 to s. 300 of the Penal Code;

(c) sudden fight within exception 4 to s. 300 of the Penal Code.

The learned judge in his written judgment went one step further to consider the defence of grave and sudden provocation (exception 1 to s. 300 of the Penal Code) even though no such defence was led and eventually held that there was no evidence to support such defence in view of the evidence of PW4, PW5 and even the evidence of the appellant himself negated such defence. We would therefore, leave this defence from our consideration though the learned judge was generous enough to consider it when he should not have considered it at all!

(a) No Intention To Kill The Deceased Within s. 300 Of The Penal Code

The Federal Court in the case of *Tham Kai Yan & Ors. v. Public Prosecutor* [1977] 1 MLJ 174 stated that intention is a matter of inference and went to state at p. 176 thus:

> The deliberate use by some men of dangerous weapon at another leads to the irresistable inference that their intention is to cause death ... In actual practice however it is frequently a matter of considerable difficulty to arrive at a conclusion by application of this principle in view of the close connection that the Penal Code makes between intention and knowledge. The provisions relating to murder and culpable homicide are probably the most tricky in the Code and are so technical as frequently to lead to confusion. Not only does the Code draw a distinction between intention and knowledge but subtle distinctions are drawn between the degrees of intention to inflict bodily injury.

The Federal Court proceeded to deal at some length to emphasise and discuss the distinctions between the provisions of s. 299, Penal Code and s. 300, Penal Code and that was what the learned judge did in this case (pp. 133 to 136 and pp. 138 to 142 of the appeal record).

The learned judge, in our view, had carefully considered the evidence of the doctor (PW3), the eye-witnesses (PW4, PW5) and the appellant on the issue of intention. In respect of the evidence of PW4 and PW5, this is what the learned judge said at p. 144:

> I have no reason not to believe PW4 and PW5. I found them to be frank and direct in their answers. Further, there was no reason adduced that they would mostly likely lie against the accused. There was no grudge between them and the accused.

The learned judge after considering the nature of the injuries sustained by the deceased, the number of wounds and the weapon used, correctly, in our view, followed what Thomson, CJ took regarding the nature of the injuries sustained by the victim as an indicator of intention in *Tan Buck Tee v. Public Prosecutor* [1961] 27 MLJ 176, where the learned CJ said at p. 179:

> There was the body with five appalling wounds on it, wounds penetrating to the heart and liver, which must have been caused by violent blows with a heavy sharp instrument like an axe. In the absence of anything else, whoever inflicted those blows must have intended to kill the person on whom they were inflicted.

The learned judge then concluded at p. 145 thus:

> Accordingly from the evidence adduced and the surrounding circumstances shown, I am satisfied that the prosecution has established beyond reasonable doubt that in inflicting the injuries sustained by the deceased the accused had, in particular, the intention of causing such bodily injuries and such injuries intended were sufficient in the course of nature to cause death. Hence the first line of defence of the learned counsel for the accused fails.

Exception 2

The counsel for the appellant conceded that the appellant had exceeded his right of private defence due to the use of P16 to inflict the injuries upon the deceased and cited *Teoh Seng Lian v. Public Prosecutor* [1986] 1 MLJ 474 in support thereof. However, *Teoh Seng Lian's* case was a trial by jury as opposed to this case which was heard by the judge alone. It was within his province to come to a decision that, on the evidence, the appellant failed on this defence.

The learned judge correctly evaluated the relevant evidence from both sides. He noted that the version of the appellant on what transpired was dramatically opposed to that of PW4 and PW5 who were present before and after the incident and he concluded at p. 147:

> From what these witnesses said the deceased would appear to have no chance at all to defend himself, let alone attacking the accused.

According to the learned judge "having given the conflicting versions my anxious consideration I am unable to accept the story of the accused and I reject it without any reservation". He accepted the version of the incident as described by PW4 and PW5 as he found them to be truthful witnesses.

He ruled that the issue of self-defence did not arise

Exception 4

This exception covers sudden fight in the heat of passion upon a sudden quarrel without premeditation.

The learned judge stated that he could not accept the version of the appellant on the events prior to the stabbing of the deceased for the reasons stated by him in dealing with exception 4 and thus the issue of sudden fight in the heat of passion upon a sudden quarrel did not arise. The learned judge said that PW4 and PW5 were very clear on what the deceased was doing just before the stabbings. According to him, from their evidence which he accepted, there was no reference to any fight or quarrel. For the reasons stated by him, the learned judge ruled that there was no basis for him to infer that prior to the stabbings there existed a sudden fight in the heat of passion upon a sudden quarrel.

The learned judge also found that by using P16 to stab the deceased not once but four times including one when the deceased had collapsed, obviously reflected a situation where the appellant had taken advantage or acted in a cruel or unusual manner thereby failing to pass the second test required under exception 4. It was not disputed by the defence that P16 was used by the appellant to inflict those injuries on the deceased.

Hence the appellant failed also under exception 4.

We now come to the issue of the cautioned statement of the appellant (D1). Counsel for the appellant submitted that D1 would allow the appellant to succeed under exceptions 2 and/or 4 of s. 300 of the Penal Code. D1 was tendered during the prosecution case at the instance of the defence and hence marked as a defence exhibit. D1 was rightly marked as a defence exhibit and hence clearly it is part of its, not the prosecution, case. In that event the prosecution is free to comment adversely on its contents as being irrelevant or being inconsistant with the prosecution evidence and therefore not truthful (*Public Prosecutor v. Mohamed Nor bin Jantan* [1979] 2 MLJ at p. 290).

In respect of D1, the learned judge said that basically what the appellant had said in his statement are quite similar to his evidence in court, namely, the shout to tear the spoilt veneer, the exchange of words with the deceased, the abusive language, his fear of being attacked and the stabbing of the deceased (p. 132 of the appeal record). Though the learned judge in his judgment did not expressly made specific finding of rejecting the contents of the cautioned statement since they are more or less the same as his oral evidence and such defence was rejected by him for the reasons stated by him and that he accepted the evidence of PW4 and PW5, it is implicit that he must in the circumstances have rejected the contents of the cautioned statement as well.

In the case of *Lim Yow Choon v. Public Prosecutor* [1972] 1 MLJ 205 the Federal Court in reference to the second question of law pursuant to s. 66 of the Courts of Judicature Act 1964 answered at pp. 206/207 thus:

> ..., we are of the view that notwithstanding that the cautioned statement was part of the evidence to the prosecution, and that there are facts in the cautioned statement which appear to contradict other parts of the evidence led by the prosecution, it was still open to the trial court as a judge of facts to assess the evidence and in so doing accept that part of it and reject the rest. It would not necessarily follow as a matter of law, that in the circumstances of the case, the trial court should acquit the appellant at the close of the case for the prosecution by reason of such contradictory evidence in the case for the prosecution.

Following the Federal Court case of *Public Prosecutor v. Mohamed Noor bin Jantan, supra,* D1 is very much part of the defence case though it was put in at the instance of the defence during the prosecution case. Hence it should be considered as forming part of the defence case. As stated earlier, the learned judge found the contents of D1 are not much different in material particulars of the oral evidence of the appellant for which he rejected when evaluating the evidence of the prosecution and the defence.

The learned judge had adequately considered in totality both the prosecution case and the defence case and he was satisfied that the prosecution had proved the charge against the appellant and the defence had not raised any doubt in his mind as to the truth of the prosecution case.

We would reiterate that an appellate court should be slow to disturb the finding of facts of a trial court unless such findings are not supported by the evidence or are against the weight of the evidence. Similarly when it comes to the credibility of witnesses, a trial court is in a better position to assess their credibility as an appellate court is not in a position to do so (*Dato' Mokhtar bin Hashim v. Public Prosecutor* [1983] 2 MLJ 232).

Having carefully perused the judgment of the learned judge and his finding of facts and the application of the law, we were satisfied that he committed no errors. Neither were we after considering the submissions of the counsel for the appellant and the deputy public prosecutor for the prosecution, convinced that the learned judge was wrong in convicting the appellant on the charge under s. 302 of the Penal Code.

In the circumstances, the appeal was dismissed and we affirmed the conviction and the sentence.

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